

SBCivil Writ Petition No.3468/1991

Kishorelal
V.
State of Rajasthan & Ors.

Date of Order :: 25th April, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.L.Purohit, for the petitioner.
Mr. R.L.Jangid]
Mr. P.S.Chundawat] for the respondents.

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A small piece of land was given on rent to the petitioner by Gram Panchayat, Shri Vijaynagar somewhere in the year 1956. The petitioner constructed a shop thereon and then further rented it out to the respondent No.3 in the year 1976. The Gram Panchayat Shri Vijaynagar thereafter was converted into Municipal Board, Shri Vijaynagar. The Government of Rajasthan by its notification dated 10.8.1983 authorised various Municipal Boards to regularise the tenancies in favour of tenants who had raised construction on the land under their tenancy. In pursuant to notification dated 10.8.1983 a Nuzul Committee was constituted and the Municipal Board Shri Vijaynagar by its resolution dated 26.12.1983 referred the case of the petitioner alongwith number of other similarly situated persons to take appropriate decision in accordance with notification of Government of Rajasthan dated 10.8.1983.

The Sub Divisional Officer, Raisinghnagar while exercising powers under Section 285 of the Rajasthan Municipalities Act, 1959 kept the resolution dated 26.12.1983 undertaken by the Municipal Board, Shri Vijaynagar under suspension by an order dated 21.2.1984. Being aggrieved by the order dated 21.2.1984 a writ petition was preferred before this Court by one Shri Kewalram and the same was registered as SBCivil Writ Petition No.2067/84. The writ petition referred above was came to be disposed of by an order dated 17.9.1984 with the directions as under:-

“It may be mentioned that the Committee is constituted under Rule 12 of the aforesaid Rules and is empowered to act independently in pursuance of the Government order Ex.5 dated August 10, 1983. The order dated August 10, 1983 (Ex.5) issued by the Government could not and has not been suspended by the Sub Divisional Officer. The Resolution of the Committee (Ex.7) is nothing but simply recognition of the order of the State Government with regard to Teh Bazar shops. The resolution of the Committee is not so independent resolution. The suspension order of the Sub Divisional Officer, therefore, has no effect whatsoever on consideration of the matter by the said Committee in pursuance of the Government order dated August 10, 1983 (Ex.5). As the Committee is competent to proceed to consider the matter in pursuance of the Government order, the petitioner should approach the Committee.”

The respondent No.3 also filed a writ petition before this Court and the same was registered as SBCivil Writ Petition No.1889/85 and that too came to be disposed of by a judgment dated 17.5.1986. In the writ petition preferred by the respondent No.3 the resolution of the Municipal Board dated 26.12.1983 was quashed and it was kept open for the Municipal Board, Shri Vijaynagar to decide the question afresh as to whether the original allottee or the person having possession on the shop shall be entitled to get the lease of the shop in accordance with the notification dated 10.8.1983. According to the petitioner the Municipal Board, Shri Vijaynagar without giving any notice to him and without providing an opportunity of hearing to him issued an order in favour of the respondent No.3 leasing out the shop No.8 (the shop in question) to the respondent No.3.

The petitioner by instant petition for writ has claimed for quashing the order issued by the Municipal Board in favour of the respondent No.3 in relation to shop No.8, Tilak Bazar, Shri Vijaynagar.

A reply to the writ petition has been filed on behalf of the respondents including the respondent No.3. It is stated by the respondent No.3 that the petitioner by application dated 23.12.1989 withdrew his claim for the shop in question and made a request

to refund the sum of Rs.7112/- to him in compliance of the judgment of this Court dated 17.5.1986. The petitioner in rejoinder denied the submission of the application dated 23.12.1989.

It is pertinent to note that the respondent No.3 has placed on record a certified copy of the application dated 23.12.1989 signed by petitioner Shri Kishorelal. This Court by order dated 19.1.2006 directed the Municipal Board, Shri Vijaynagar to produce original record of the proceeding as a consequence of which sale was executed in favour of the respondent No.3 with regard to shop in question. The record was produced by the respondents but in that record the application dated 23.12.1989 was not found. A detailed order after perusing the record of the Municipal Board was passed on 14.2.2006. From the office of the Collector, Sriganaganagar also information was sought with regard to availability of the application. It is urged by counsel for the respondents that the applications could not be tressed out being quite old one.

Be that as it may, a certified copy of the application dated 23.12.1989 is placed on record by the respondent No.3. The issuance of certified copy of the application itself establishes that the application was submitted and was available on record. The facual dispute as to whether the petitioner has

signed such application or not is highly disputed and this Court is not equipped sufficiently to examine this issue.

The writ petition being involving complicated questions of fact cannot be suitably adjudicated under Article 226 of the Constitution of India. The writ petition, therefore, is dismissed with no order as to costs.

(GOVIND MATHUR),J.

kkm/ps .